IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

CRL.A.No. 422 of 2000(A)

(C.C. NO.233/1997 JUDICIAL IST CLASS MAGISTRATE COURT – I, THIRUVANANTHAPURAM.

....

APPELLANT: COMPLAINANT

R.V.SATHEESH, M.K.K.NAIR ROAD,
PETTAH, THIRUVANANTHAPURAM.

BY ADV. SRI.M.BALAGOVINDAN

RESPONDENTS: ACCUSED
----

1. **K.GOPAKUMAR, KAIYALATHU LANE,**
   T.C. 36/547 (1), INDIRA BHAVAN,
   PAIKULANGARA, THIRUVANANTHAPURAM.

2. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A No. 422 of 2000

Dated 29th June, 2007

JUDGMENT

The appellant is the complainant in C.C.No.233/97 who had initiated proceedings under section 138 N.I.Act allegedly for the dishonour of cheque dated 16-6-97 for a sum of Rs.85,000/-.

2. The evidence adduced in the matter consisted of the testimony of PWs 1 to 3; Exts.P1 to P14; DW-1 and Exts.D1 to D4.

3. Although notice was served, there was no representation for the accused. The court below, on a consideration of the evidence adduced, has observed that since the accused had given stop payment instructions on 11-2-97, it cannot be believed that he issued Ext.P1 cheque on 16-6-97. It has also been held that complainant being a person conducting a bakery and maintaining income and expenditure account, he would have definitely incorporated the amount lent in the accounts and hence, the failure to

produce the accounts is a material aspect. I find that the observations and findings of the courts below warrant reconsideration. In the circumstances, the matter of acquittal is set aside. The court below is directed to dispose of the matter on merits after affording the parties to adduce any further evidence if they so desire and untrammelled by any observations contained herein. The appellant/complainant will appear before the court below on 8-8-2007.

The Crl.appeal is disposed of as above.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. 422 OF 2000

ORDER

5-7-2007